

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B14

Date: FEB 22 2012

Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

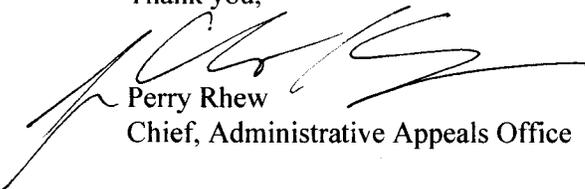
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the U nonimmigrant visa petition and matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien . . . possesses information concerning criminal activity described in clause (iii);

(III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulation at 8 C.F.R. § 214.14(a) contains definitions that are used in the U nonimmigrant classification, and provides for the following:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

* * *

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (law enforcement certification). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a native and citizen of the Republic of Trinidad and Tobago who entered the United States in May 2001 as a nonimmigrant visitor. The petitioner filed the instant Form I-918 U petition on July 27, 2010. The director found the petitioner ineligible for U nonimmigrant status because he failed to establish that he suffered substantial physical or mental abuse as a result of qualifying criminal activity. On appeal, counsel submits a brief and evidence already included in the record.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We affirm the director's ultimate determination that the petitioner has not established his eligibility for U nonimmigrant status; however, we withdraw the director's implicit finding that the petitioner was the victim of qualifying criminal activity, namely extortion.¹

Criminal Activity

As stated earlier in this decision, USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including a law enforcement certification (LEC). 8 C.F.R. § 214.14(c)(4). In this matter, the record contains an LEC, dated August [REDACTED] and signed by [REDACTED] Integrity Bureau, Queens County, New York District Attorney's Office (certifying official).

The LEC identified the criminal activity at Part 3.1 as grand larceny in the second degree. The certifying official provided the statutory citation for the criminal activity at Part 3.3 as section 155.40-1 of the New York Penal Law (NYPL). The certifying official stated "See attached papers" at Parts 3.5

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

and 3.6 where he was asked to describe the criminal activity that was investigated or prosecuted as well as any known or documented injuries to the petitioner. The documentation attached to the LEC indicated that the perpetrator was indicted for, among other offenses, grand larceny in the second degree in violation of NYPL § 155.40-1.

According to the petitioner's May 28, 2010 statement, one of the regular customers (the perpetrator) at his place of employment asked him if he knew of anyone who needed a "green card" and he showed the petitioner an identity document that said "U.S. Immigration." The petitioner stated that in October 2003 he paid the perpetrator approximately \$10,000 to process paperwork for the "green card lottery." According to the petitioner, in approximately February or March 2004 he received a document in the mail congratulating him on winning the "green card lottery" and he gave the perpetrator additional money to continue processing paperwork. The petitioner asserted that after not hearing anything about his "green card," he approached the perpetrator about the money he had given him, and the perpetrator told him that he would have him deported, so the petitioner decided not to pursue the matter with the perpetrator any longer. The petitioner stated that only after reading about the perpetrator's arrest in late 2009 or 2010 did he call the Assistant District Attorney about his experiences with the perpetrator.

The evidence of record fails to demonstrate that the petitioner was the victim of extortion. First, the certifying official does not describe on the LEC the petitioner's victimization or any known or documented injuries to him. In addition, the documentation attached to the LEC, which included an indictment of the perpetrator and a deposition by a Detective from the Port Authority of New York, does not name the petitioner as a victim. The LEC does contain any description of the petitioner's victimization for the criminal activity listed at Part 3.3. Although the certifying official confirmed that the petitioner was helpful to the investigation, he did not explain the events that resulted in the certified qualifying crime being committed against the petitioner. Accordingly, we find the LEC deficient in establishing that the petitioner was a victim of grand larceny in the second degree.

Even if the relevant evidence had established that the petitioner was the victim of grand larceny in the second degree, this crime would not be similar to the qualifying crime of extortion. On appeal, counsel cites NYPL § 155.40 and states that the crime of extortion under New York law is by definition also the crime of grand larceny. Counsel, however, does not acknowledge that the specific statutory citation listed at Part 3.3 of the LEC is NYPL § 155.40-1. New York penal law defines grand larceny as, in pertinent part:

A person is guilty of grand larceny in the second degree when he steals property and when:

1. The value of the property exceeds fifty thousand dollars; **or**
2. The property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as

a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

N.Y. Penal Law § 155.40 (McKinney 2011) (Emphasis added).

Extortion is defined at NYPL § 155.05(2)(e) as a means by which a larceny may be perpetrated.² The perpetrator of the crime in the instant matter, however, was not prosecuted under NYPL § 155.40-2, which specifically relates to larceny by extortion. The perpetrator in this matter was prosecuted for violating NYPL § 155.40-1, which only involves stealing property with a value in excess of \$50,000. The petitioner's LEC also cites subsection one of the New York second degree grand larceny statute. As the record contains no evidence that the crime investigated, prosecuted and committed against the petitioner involved grand larceny by extortion under subsection two of NYPL § 155.40, there is no merit to counsel's claim that the petitioner was the victim of a crime substantially similar to extortion. Accordingly, the relevant evidence fails to establish that the petitioner was the victim of extortion or any other qualifying criminal activity enumerated at section 101(a)(15)(U)(iii) of the Act.

² N.Y. Penal Law § 155.05 (McKinney 2011) defines larceny by extortion as follows:

2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

* * *

(e) By extortion.

A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

- (i) Cause physical injury to some person in the future; or
- (ii) Cause damage to property; or
- (iii) Engage in other conduct constituting a crime; or
- (iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or
- (v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (vii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Substantial Physical or Mental Abuse

Even if the petitioner had been the victim of extortion, the relevant evidence would fail to establish that he suffered any resultant, substantial physical or mental abuse. The regulation at 8 C.F.R. § 214.14 states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

The regulation at 8 C.F.R. § 214.14(b)(8) defines *physical or mental abuse* as: "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

The record contains the petitioner's May 28, 2010 statement; a March 2, 2011 psychological evaluation prepared by [REDACTED] Ph.D.; and a May 9, 2011 letter from [REDACTED] Ph.D. In his statement, the petitioner did not provide any information regarding any physical or mental abuse from which he suffered as a result of his victimization. In his psychological evaluation, [REDACTED] indicated that the petitioner informed him that after he realized that he had been defrauded, he became depressed and for many years has experienced: difficulty falling asleep and staying asleep; a loss in appetite and weight; trouble focusing, concentrating and paying attention; persistent sadness; chronic anxiety; numerous crying spells; a decrease in his libido; nightmares; flashbacks; and startled reactions. [REDACTED] diagnosed the petitioner with Post Traumatic Stress Disorder (PTSD) and Adjustment Disorder with Mixed Anxiety and Depressed Mood, and referred the petitioner to a psychologist for psychotherapy. In his May 9, 2011 letter, [REDACTED] stated that he is providing psychotherapy to the petitioner because the petitioner is experiencing a fear of being forced to leave the United States. [REDACTED] letter also included much of the same information that the petitioner reported to [REDACTED] regarding the petitioner's symptoms, with the additional information that the petitioner is currently taking an antidepressant medication.

On appeal, counsel states that the director did not give due consideration to the evidence from [REDACTED]

██████████ regarding the effects of the criminal activity on the petitioner. Counsel asserts that the petitioner has suffered substantial physical or mental abuse as a result of being extorted. A full review of the record fails to demonstrate that, even if the petitioner had established that he was the victim of qualifying criminal activity, he suffered resultant substantial physical or mental abuse.

Neither the petitioner nor ██████████ describe any physical abuse that the petitioner suffered. Rather, the evidence relates to mental abuse and the petitioner's claim shall be evaluated on this basis only.

The petitioner has not provided a statement describing in his own words any effects of the perpetrator's actions on his mental soundness. According to ██████████ evaluation, the petitioner's depression and PTSD, which manifested themselves in ways such as nightmares, and a decreased appetite, began after he realized that he had been defrauded, which was approximately five or six years after he last had contact with the perpetrator. While ██████████ stated that the petitioner has been clinically depressed and experiencing the symptoms of PTSD "for many years," he related the depression and PTSD to the petitioner's realization of the fraud, which occurred less than two years prior to ██████████ evaluation. ██████████ letter also fails to establish that the petitioner suffered substantial mental abuse as a result of his interactions with the perpetrator. ██████████ states that he is treating the petitioner for symptoms of depression and anxiety that stem from the petitioner's fear of being removed from the United States. Although he relates the petitioner's PTSD to the petitioner's interactions with the perpetrator, Dr. ██████████ letter is focused on why the petitioner should not be removed to Trinidad, and provides no information about how the petitioner's victimization resulted in substantial mental abuse. Overall, the relevant evidence does not demonstrate that the petitioner suffered substantial mental abuse as a result of having been a victim of the perpetrator's fraudulent scheme.

Conclusion

The petitioner has not established that he was the victim of a qualifying crime, or that he suffered substantial physical or mental abuse as a result of such victimization under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1), and as required by section 101(a)(15)(U)(i)(I) of the Act. He therefore also fails to meet the remaining eligibility requirements for U nonimmigrant status. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not met his burden and remains ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed. The petition remains denied.